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TERESA LANDUCCI

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERESA LANDUCCI, on behalf of herself
and others similarly situated,

Plaintiff,

v.

FREEMAN EXPOSITIONS, LLC and DOES
1 to 100, inclusive,

Defendants.

Case No. 3:19-cv-07573-JCS

CLASS AND COLLECTIVE ACTION

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT AND
AWARDING ATTORNEYS' FEES,
COSTS, AND SERVICE AWARD**

Date: August 26, 2022
Time: 9:30 a.m. (via zoom)
Judge: Chief Magistrate Judge
Joseph C. Spero

[PROPOSED] ORDER

Plaintiff's Motion for Final Approval of Settlement Agreement came on for hearing on August 26, 2022. The Court, having considered whether to order final approval of the class action settlement in the above-captioned action pursuant to the "AMENDED JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT" ("Settlement" or "Stipulation"), having read and considered all of the papers and argument of the parties and their counsel, having granted preliminary approval on April 6, 2022, having directed that notice be given to all Class Members of preliminary approval of the Settlement, the final approval and fairness hearing, and the right to be excluded from the Settlement, and having received no objections and good cause appearing,

[PROPOSED] ORDER GRANTING MOTIONS FOR FINAL APPROVAL OF CLASS SETTLEMENT, ATTORNEYS' FEES, COSTS, AND SERVICE AWARD.

1 IT IS HEREBY ORDERED AS FOLLOWS:

2 1. All defined terms contained herein shall have the same meaning as set forth in
3 the Stipulation executed by the Parties and filed with this Court.

4 2. The Court finds that certification of the following Class is appropriate for
5 settlement purposes:

6 All persons who received a physical paycheck from Defendant in California and were
7 assessed a check cashing fee by BOFA when attempting to cash such a paycheck at
8 any time during the period from November 18, 2015 through April 6, 2022.

9 3. The Court hereby finds that the Notice of Settlement, as mailed to all Class
10 Members on May 11, 2022, and the Corrected Notice of Settlement, as mailed to all Class
11 Members on May 27, 2022, fairly and adequately described the proposed Settlement, the
12 manner in which Class Members could object to or participate in the Settlement, and the
13 manner in which Class Members could opt out of the Settlement; was the best notice
14 practicable under the circumstances; was valid, due and sufficient notice to all Class
15 Members; and complied fully with the Federal Rules of Civil Procedure, due process, and all
16 other applicable laws.

17 4. The Court further finds that a full and fair opportunity has been afforded to Class
18 Members to participate in the proceedings convened to determine whether the proposed
19 Settlement should be given final approval. Accordingly, the Court hereby determines that all
20 Class Members who did not file a timely and proper request to be excluded from the Settlement
21 are bound by this Order of Final Approval and the Judgment.

22 5. The Court hereby finds that the Settlement, including the Gross Settlement
23 Amount, is fair, reasonable, and adequate as to the Class, Plaintiff and Defendant, and is the
24 product of good faith, arm's-length negotiations between the Parties, and further, that the
25 Settlement is consistent with public policy, and fully complies with all applicable provisions of
26 law. The Court makes this finding based on a weighing of the strength of Plaintiff's claims
27 and Defendant's defenses with the risk, expense, complexity, and duration of further litigation.

1 6. The Court also finds that the Settlement is the result of non-collusive arms-
2 length negotiations between experienced counsel representing the interests of the Class and
3 Defendant, after thorough factual and legal investigations. In granting final approval of the
4 Settlement, the Court considered the nature of the claims, the amounts paid in settlement,
5 the allocation of the Net Settlement Fund among the Class Members, and the fact that the
6 Settlement represents a compromise of the Parties' respective positions rather than the result
7 of a finding of liability after appeal. The Court also finds that the terms of the Settlement do
8 not improperly grant preferential treatment to any individual Class Member.

9 7. The Court further finds that the response of the Class to the Settlement supports
10 final approval of the Settlement. Specifically, no Class Member has objected to the
11 Settlement, and none have opted out. Accordingly, pursuant to Rule 23(e), the Court finds
12 that the terms of the Settlement are fair, reasonable, and adequate to the Class and to each
13 Class Member. *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003).

14 8. The Court also hereby finds that Plaintiff has satisfied the standards and
15 applicable requirements for final approval of this class action settlement under Fed. R. Civ.
16 P. 23, for the reasons stated in the Motion for Final Approval.

17 9. The Court orders the Parties to implement, and comply with, the terms of the
18 Settlement.

19 10. The Court approves the plan of allocation as set forth in the Stipulation.

20 11. The Court approves the settlement of the Released Claims as defined in the
21 Settlement.

22 12. As of the Effective Date of the Settlement, as defined in the Settlement, all of
23 the Released Claims of each Class Member who did not timely opt out, including Plaintiff, are
24 and shall be deemed to be conclusively released as against the Defendant and other
25 Released Parties. Except as to such rights or claims that may be created by the Settlement,
26 all Class Members as of the date of the Order of Final Approval and the Judgment who did
27 not timely opt out are hereby forever barred and enjoined from commencing or prosecuting

1 any of the Released Claims, either directly, representatively or in any other capacity, against
2 Defendant and other Released Parties.

3 13. As of the Effective Date of the Settlement, as defined in the Settlement, all of
4 the Released PAGA Claims of each PAGA Member (each person who received a physical
5 paycheck for work performed for Defendant from November 18, 2018 through April 6,
6 2022), including Plaintiff, are and shall be deemed to be conclusively released as against the
7 Defendant and other Released Parties. Except as to such rights or claims that may be created
8 by the Settlement, all PAGA Members as of the date of the Order of Final Approval and the
9 Judgment are hereby forever barred and enjoined from commencing or prosecuting any of
10 the Released PAGA Claims, either directly, representatively or in any other capacity, against
11 Defendant and other Released Parties.

12 14. As of the Effective Date of the Settlement, as defined in the Settlement, all of
13 the claims of the Named Plaintiff are and shall be deemed to be conclusively generally
14 released against the Defendant and other Released Parties. Except as to such rights or
15 claims that may be created by the Settlement, Plaintiff as of the date of the Order of Final
16 Approval and the Judgment is hereby forever barred and enjoined from commencing or
17 prosecuting any of the generally released claims, either directly, representatively or in any
18 other capacity, against Defendant and other Released Parties.

19 15. Class Counsel, Hoyer & Hicks, are confirmed and shall continue to serve as
20 Class Counsel and shall oversee and perform the duties necessary to effectuate the
21 Settlement, including the submission to the Court of the Settlement Administrator's final
22 distribution report, as well as all papers necessary to allow this Court to evaluate the claims
23 process and distribution of the Settlement Fund to Class Members.

24 16. Plaintiff's Counsel is awarded attorney's fees in the amount of \$166,666.67.
25 The foregoing award is 33.33% of the Settlement Fund of \$500,000. Plaintiff's Counsel is
26 further awarded reimbursement of reasonable costs and expenses necessarily incurred in
27

1 order to advance the litigation for the benefit the class in this matter in the amount of
2 \$10,376.12. These awards shall be paid from the Settlement Fund.

3 17. In determining an award of attorney's fees where the class action settlement
4 establishes a common fund for the benefit of the class out of which the attorney's fee is
5 awarded, courts have adopted the percentage of fee calculation. *Laffitte v. Robert Half*
6 *Internat., Inc.*, 1 Cal. 5th 480, 493-94 (2016). The Court finds that a fee award of one-third of
7 the Gross Settlement Amount, and upward adjustment to the Ninth Circuit 25% benchmark is
8 appropriate in light of the factors to be considered, including: (1) the results achieved; (2) the
9 risk of litigation; (3) the skill required; (4) the quality of work performed; (5) the contingent
10 nature of the fee and the financial burden; and (6) the awards made in similar cases. See
11 *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013)(citing *Vizcaino*
12 *v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

13 18. In addition, the Court finds the fee award reasonable under the lodestar cross-
14 check method, considering Class Counsel are seeking a negative multiplier to their lodestar
15 as of June 2022. *Laffitte*, 1 Cal.5th at 506; *Vizcaino*, 290 F.3d at 1043. In so finding, the
16 Court has considered a variety of factors, including "the quality of the representation, the
17 novelty and complexity of the issues, the results obtained, and the contingent risk presented."
18 *Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 26 (2000); see *Hanlon v. Chrysler Corp.*,
19 150 F.3d 1011, 1029 (9th Cir. 1998).

20 19. Plaintiff Teresa Landucci is confirmed as Class Representative. The Class
21 Representative is awarded a service award in the amount of \$10,000. This payment shall be
22 made from the Settlement Fund and is in addition to her share as a Class Member.

23 20. Administrative Costs in the amount of \$18,000 from the Settlement Fund to be
24 paid to the Settlement Administrator Simpluris, Inc., are approved. Class Counsel are directed
25 to pay the remaining \$500 incurred by the Administrator in mailing the corrected notices.

26 21. The Court allocates Seventy-Five Thousand dollars (\$75,000) of the Settlement
27 Fund to penalties under the Private Attorneys General Act ("PAGA"), with seventy-five

1 percent (75%) of the PAGA penalties, Fifty-six Thousand Two Hundred Fifty dollars
2 (\$56,250.00), to be paid to the California Labor and Workforce Development Agency
3 ("LWDA") and twenty-five percent (25%) of the PAGA penalties, Eighteen Thousand Seven
4 Hundred Fifty dollars (\$18,750.00) to be paid to the PAGA Members.

5 22. Defendant shall have no further liability for costs, expenses, interest, attorneys'
6 fees, or for any other charge, expense, or liability, in connection with the above-captioned
7 action except as provided in the Settlement.

8 23. The Settlement is not an admission by Defendant, nor is this Final Approval
9 Order and Judgment a finding of the validity of any claims in the Action or of any wrongdoing
10 by Defendant or that this Action is appropriate for class treatment (other than for settlement
11 purposes). Neither this Final Approval Order or the Judgment, the Settlement Agreement,
12 nor any document referred to herein, nor any action taken to carry out the Settlement
13 Agreement is, may be construed as, or may be used as an admission by or against Defendant
14 of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the
15 Settlement, and any negotiations or proceedings related thereto, shall not in any event be
16 construed as, or deemed to be evidence of, an admission or concession with regard to the
17 denials or defenses by Defendant. Notwithstanding these restrictions, Defendant and other
18 Released Parties may file in the Action or in any other proceeding this Final Approval Order
19 and Judgment, the Settlement Agreement, or any other papers and records on file in the
20 Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,
21 release, or other theory of claim or issue preclusion or similar defense as to the Released
22 Claims.

23 24. Notice of entry of this Final Approval Order and the Judgment shall be given to
24 all Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval
25 Order and Judgment shall be posted on the Settlement Administrator's website. It shall not
26 be necessary to send notice of this Final Approval Order and entry of Judgment to individual
27 Class Members.

1 25. Within 21 days after the distribution of the settlement funds and payment of
2 attorneys' fees, Plaintiff shall file a Post-Distribution Accounting, which provides the following
3 information:

4 a. The total settlement fund, the total number of class members, the total
5 number of class members to whom notice was sent and not returned as undeliverable,
6 the number and percentage of claim forms submitted, the number and percentage of
7 opt-outs, the number and percentage of objections, the average and median recovery
8 per claimant, the largest and smallest amounts paid to class members, the method(s)
9 of notice and the method(s) of payment to class members, the number and value of
10 checks not cashed, the amounts distributed to each *cy pres* recipient,¹ the
11 administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of
12 percentage of the settlement fund, and the multiplier, if any. Counsel will summarize this
13 information in an easy-to-read chart that allows for quick comparisons with other cases.

14 26. Within 21 days after the distribution of the settlement funds and award of
15 attorneys' fees, the Administrator shall post the Post-Distribution Accounting, including the
16 easy-to-read chart, on the settlement website.

17 27. If the Settlement does not become final and effective in accordance with the
18 terms of the Stipulation, then this Final Approval Order and the Judgment, and all orders
19 entered in connection herewith, shall be rendered null and void and shall be vacated, and the
20 Parties shall revert to their respective positions as of before entering into the Settlement, and
21 expressly reserve their respective rights regarding the prosecution and defense of this Action,
22 including all available defenses and affirmative defenses, and arguments that any claim in
23 the Action could not be certified as a class action and/or managed as a representative action.

24 28. Without affecting the finality of the Order of Final Approval or the Judgment, the
25 Court retains exclusive and continuing jurisdiction over the case, Plaintiff, all Class Members
26 and Defendant for purposes of supervising, implementing, interpreting and enforcing the

27 ¹ The Court hereby approves the Parties request to designate The Impact Fund as the *cy pres* beneficiary to
28 any residue from this Settlement.

1 Order of Final Approval and the Judgment and the Settlement. Nothing in the Order of Final
2 Approval precludes any action to enforce the Parties' obligations under the Settlement or
3 under this Order of Final Approval.

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5 IT IS SO ORDERED.

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8 Date: _____

9 _____
10 Hon. Joseph C. Spero
11 U.S. Chief Magistrate Judge
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